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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/539,566

06/07/2005

Francois Bangui

0521-1027

5911

466 7590 10/23/2009
YOUNG & THOMPSON
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EXAMINER

ABRISHAMKAR, KAVEH

ART UNIT

PAPER NUMBER

2431

MAIL DATE

DELIVERY MODE

10/23/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/539,566	Applicant(s) BANGUI, FRANCOIS	
	Examiner KAVEH ABRISHAMKAR	Art Unit 2431	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 October 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: None.
 Claim(s) objected to: None.
 Claim(s) rejected: 22-41 and 43-46.
 Claim(s) withdrawn from consideration: None.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Kaveh Abrishamkar/
 Primary Examiner, Art Unit 2431

Continuation of 11. does NOT place the application in condition for allowance because: In response to the applicant's argument that the signature disclosed by McCarroll is not a certificate according to the invention since it cannot be executed, the examiner respectfully points out that the portion of the software code for the game that is digitally signed is being read on the executable certificate and not the accompanying signature file containing a digest that corresponds to an unmodified portion of software code for the game that is digitally signed.

In response to the applicant's argument that McCarroll performs a mathematical comparison and not a positive comparison as defined in the specification, the examiner respectfully points out that a positive comparison is defined as "any action, operation or modification on the data used by the software application to be verified or any action, operation or modification on the running of the execution of the software application to be verified produces a behavior of the software application to be verified identical to that which is expected by the running of the execution of the authentic application." See applicant's specification page 2 lines 18-23. The examiner now points out that hashing a portion of software code into a first message digest is any action, operation or modification, the first message digest is a behavior of the portion of software code, and a second message digest from the signature file is that which is expected by running the execution of the authentic application. See McCarroll paragraph 30. Accordingly, the digest comparison performed by McCarroll fits within the definition of positive comparison defined in the applicant's specification.

In response to the applicant's argument that McCarroll contains a tamperproof circuit for cryptographic operation whereas the certificate of the invention is executed on the host terminal itself, the examiner respectfully points out that the tamperproof circuit for cryptographic operations is contained in the host terminal. See McCarroll fig.1 ref. nos. 100 and 120. The examiner further points out that the claim language recites the transitional phrase "comprising," and therefore is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. See MPEP 2111.03

In response to the applicant's argument that a signature is decrypted before the application is executed, the examiner respectfully disagrees with the applicant's position. The examiner respectfully points out that the execution of the software code for a game begins with the boot process and reading the software code from the game disc. The decryption of a signature occurs during this boot process and therefore the decryption of a signature is a step contained with the execution of the software code for game..